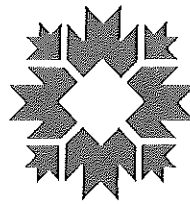




**APPENDIX QQ  
WAPEHANI MEMORANDUM OF AGREEMENT**



CITY OF BLOOMINGTON  
parks and recreation

Mailing Address

*Administrative Offices*

401 N. Morton Street Suite 250  
PO Box 848  
Bloomington, IN 47402  
Phone: (812) 349-3700  
Fax: (812) 349-3705  
parks@bloomington.in.gov  
www.bloomington.in.gov/parks

*Allison-Jukebox*

*Community Center*

351 South Washington Street  
Bloomington, IN 47401  
(812) 349-3731

*Banneker Community Center*

930 West 7th Street  
Bloomington, IN 47402  
(812) 349-3735

*Cascades Golf Course*

3550 North Kinser Pike  
Bloomington, IN 47402  
(812) 349-3764

*Frank Southern Ice Arena*

1965 South Henderson Street  
Bloomington, IN 47401  
(812) 349-3740

*Twin Lakes Recreation Center*

1700 West Bloomfield Road  
Bloomington, IN 47403  
(812) 349-3720

*Inclusive Recreation*

(812) 349-3747

*Maintenance, Landscaping  
& Cemetery Operations*

(812) 349-3498

*Urban Forestry*

(812) 349-3716

May 23, 2013

Ms. Sandra Flum  
Project Manager, I-69  
Indiana Department of Transportation  
100 N. Senate Ave., Room N758  
Indianapolis, IN 46204

RE: I-69, Section 5  
Wapehani Mountain Bike Park  
Memorandum of Agreement

Dear Ms. Flum,

Please find the Wapehani Mountain Bike Park (WMBP) Memorandum of Agreement (MOA), executed by John Carter, President, Bloomington Board of Park Commissioners. With this transmittal, the City of Bloomington confirms that the project described in the MOA will not adversely affect the features attributes or activities qualifying WMBP for protection under Section 4(f) of the Department of Transportation Act of 1966, 49 USC 303(c).

Sincerely,

John Carter  
President  
Bloomington Board of Park Commissioners

**MEMORANDUM OF AGREEMENT**  
REGARDING WAPEHANI MOUNTAIN BIKE PARK MITIGATION  
FOR I-69 EVANSVILLE TO INDIANAPOLIS PROJECT,  
SECTION 5, BLOOMINGTON TO MARTINSVILLE INDIANA (FHWA-IN-EIS-12-01-D)  
IN MONROE AND MORGAN COUNTIES, INDIANA

EDS No. \_\_\_\_\_

**PURPOSE**

This Memorandum of Agreement ("MOA") is entered into among the Federal Highway Administration, Indiana Division Office ("FHWA"), the Indiana Department of Transportation ("INDOT"), and the City of Bloomington, Indiana (the "City") to address *de minimis* use and mitigation requirements for FHWA and INDOT's I-69 Evansville to Indianapolis Indiana Project, Section 5, Bloomington to Martinsville, Indiana (the "Project"), including the construction of I-69 located adjacent to Wapehani Mountain Bike Park (the "WMBP"), in accordance with Section 4(f) of the Department of Transportation (DOT) Act and additional provisions under Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

**WITNESSETH**

WHEREAS, the City owns 32.77 acres of the WMBP (legally described as 015-46080-01 PT NW SW 7-8-1W 32.77A PLAT10) and the Bloomington Community Park & Recreational Foundation (the "Foundation") owns a 12.66 acre addition to the WMBP (legally described as 015-38071-09 MILL CREEK 1ST LOT 9), for a total of 45.43 acres within the WMBP boundary (as shown in Exhibit A to this MOA, attached and herein incorporated by reference); and

WHEREAS, though the parcels comprising the WMBP are owned by two independent entities, the City promotes and manages the WMBP as a combined facility under a licensing agreement with the City of Bloomington Utilities Service Board; and

WHEREAS, construction of the Project will require up to 1.06 acres of right-of-way for highway purposes from lands owned by the City as part of WMBP and another 0.67 acres of right-of-way for highway purposes from lands that are owned by the Foundation, for a total of up to 1.73 acres; and

WHEREAS, the right-of-way needed will be in the form of a strip of land approximately 20 to 80 feet wide along the current western boundary of the park, adjacent to and east of the existing SR 37 right-of-way containing approximately 310 feet of wooded trail with a foot bridge; and

WHEREAS, INDOT has minimized to the extent practical the area of the WMBP required to construct I-69 as shown in Exhibit A (attached and herein incorporated by reference); and

WHEREAS, the Draft Environmental Impact Statement ("DEIS") prepared for the Project considered alternatives that avoid the park (Alternatives 4 and 6, and DEIS Preferred Alternative 8, as shown in Exhibit B, attached and herein incorporated by reference); and

WHEREAS, the avoidance alternatives considered in the DEIS demonstrate that those alternatives are not prudent given the increased impacts on existing homes and businesses and the need to relocate major utilities such as natural gas and electric transmission lines; and

WHEREAS, implementing the avoidance alternatives would result in a \$5.4 million increase in Project costs and result in total take of seven residential properties; and

WHEREAS, comments in the DEIS comments pertaining to this resource (as shown in Exhibit D, attached and herein incorporated by reference) were nearly unanimous in favoring the alternative that used the 50-foot strip of land from the WMBP (based on Alternative 7, as shown in Exhibit C to this MOA, attached and herein incorporated by reference); and

WHEREAS, FHWA included a proposed *de minimis* finding in the DEIS; and

WHEREAS, the potential for mitigation and other measures that may minimize harm to the park have been considered; and

WHEREAS, the Project proposes “no shift” of the alignment at this location (similar to Alternative 7 and shown in Exhibit A, attached); and

WHEREAS, it is agreed by the City that this use of land from the WMBP will not diminish the overall function of the WMBP nor interfere with the activities or purpose of this park; and

WHEREAS, the WMBP land required for right-of-way will be purchased in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646), as amended in 1987 (the “Uniform Act”); and

WHEREAS, the FHWA and INDOT will compensate the City in an amount not to exceed \$460,172.00 to reconnect the portion of the trail impacted by the Project and to provide other aesthetic improvements identified by the City on property owned by the City within the WMBP; and

WHEREAS, FHWA has determined that the WMBP is protected as a significant public park; and

WHEREAS, FHWA issued a proposed *de minimis* finding under Section 4(f) for use of the WMBP land as part of the Project the improvements may qualify as a *de minimis* Section 4(f) impact finding for the WMBP, based on the ongoing efforts to avoid, minimize and mitigate impacts; and

WHEREAS, INDOT, FHWA and the City will continue to coordinate over final design of the Project as it affects the remaining WMBP property; and

WHEREAS, the INDOT project team staff actively worked with staff of the City to provide adequate design information and will coordinate an acceptable land purchase for the stated WMBP property owned by the City and the Foundation.

NOW THEREFORE FHWA, INDOT AND THE CITY AGREE AS FOLLOWS:

1. The undersigned acknowledge that this MOA represents a framework for proceeding forward and it is fully understood by all Parties that further agreements and actions, including approval of the Project by FHWA allowing use of the WMBP, will be necessary.
2. Subject to requirements established in the Record of Decision to be issued by FHWA for the Project, the FHWA and INDOT will construct the proposed Project in accordance with preliminary plans provided to the City, minor alterations during final design notwithstanding.

3. For lands being used and occupied as part of the right-of-way for highway purposes, INDOT will compensate the City and the Foundation in accordance with provisions of the Uniform Act.

4. For further compensation to offset impacts to WMBP caused by the Project, INDOT will provide a payment mechanism (a purchase order) in an amount not to exceed \$460,172.00 to the City within 90 days of the Record of Decision and funding of the Project. Once final payment is made, INDOT and FHWA mitigation requirements will be satisfied and all obligations between INDOT, FHWA, and City pertaining to this resource will be satisfied, except for the right-of-way purchase.

5. To prevent the loss of use of the WMBP, the City will reconnect the portion of the trail impacted by the Project in a manner that will offer the user a similar challenge and provide other aesthetic improvements as outlined by the City within a timely manner. The City acknowledges that it may be required to submit to an audit of funds paid through this Agreement. Any such audit shall be conducted in accordance with IC 5-11-1, et. seq. and applicable audit guidelines (including applicable provisions of the Office of Management and Budget Circulars A-133, Audits of States, Local Governments, and Non-Profit Organizations) specified by the State or by FHWA.

6. The obligations of INDOT and FHWA contained in this MOA are contingent upon the City providing a letter to FHWA and INDOT confirming that the Project will not adversely affect the features, attributes, or activities qualifying the WMBP for protection under Section 4(f). The City will provide such a letter, in a form acceptable to FHWA and INDOT within 5 (five) business days of signing this MOA.

7. All payments shall be made according to the terms of this Agreement and in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the City in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20.

8. The City shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances in performing any work related to or arising out of this Agreement. For purposes of clarity and to avoid misunderstanding, the City understands and agrees that it must comply with all federal contracting requirements. The City also understands and agrees that it must complete a Public Interest Finding or a Determination of Cost Effectiveness, which must be approved by FHWA before the City may perform any work with its own forces under this MOA. INDOT will assist the City in preparing the Public Interest Finding or Determination of Cost Effectiveness and submitting such documentation to FHWA for approval. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations there under after execution of this Agreement shall be reviewed by the State and the City to determine whether the provisions of this Agreement require formal modification.

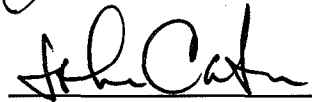
MEMORANDUM OF AGREEMENT  
WAPEHANI MOUNTAIN BIKE PARK MITIGATION  
I-69 EVANSVILLE TO INDIANAPOLIS PROJECT,  
SECTION 5, BLOOMINGTON TO MARTINSVILLE INDIANA

Signature Page


INDIANA DEPARTMENT OF TRANSPORTATION

FOR By:  DEPUTY COMMISSIONER IPD 5/30/2013  
Commissioner, Indiana Department of Transportation Date

THE CITY OF BLOOMINGTON INDIANA

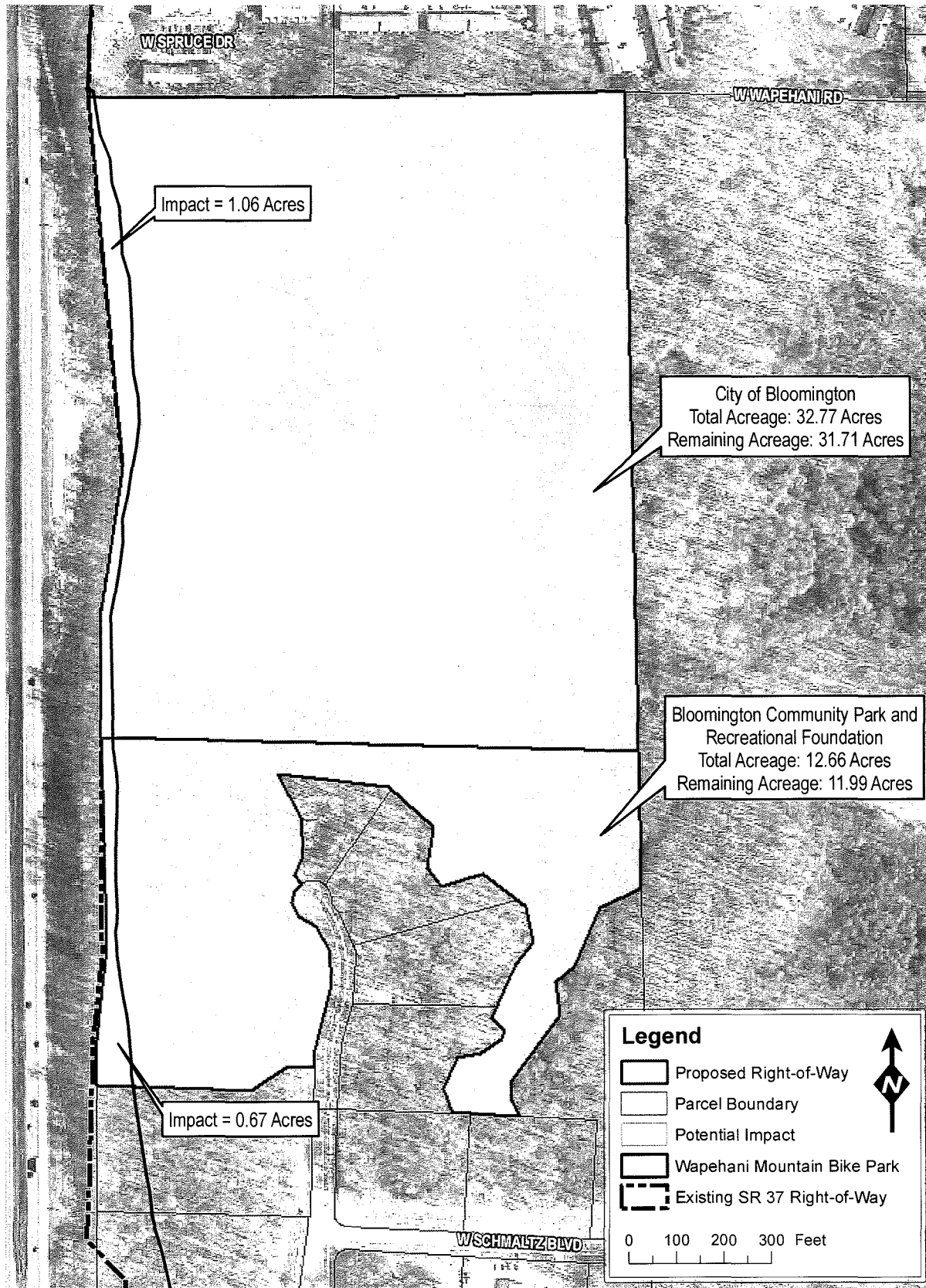
By:  5/23/13  
City of Bloomington Date  
Title: PRESIDENT, BOARD OF PARK COMMISSIONERS

FEDERAL HIGHWAY ADMINISTRATION

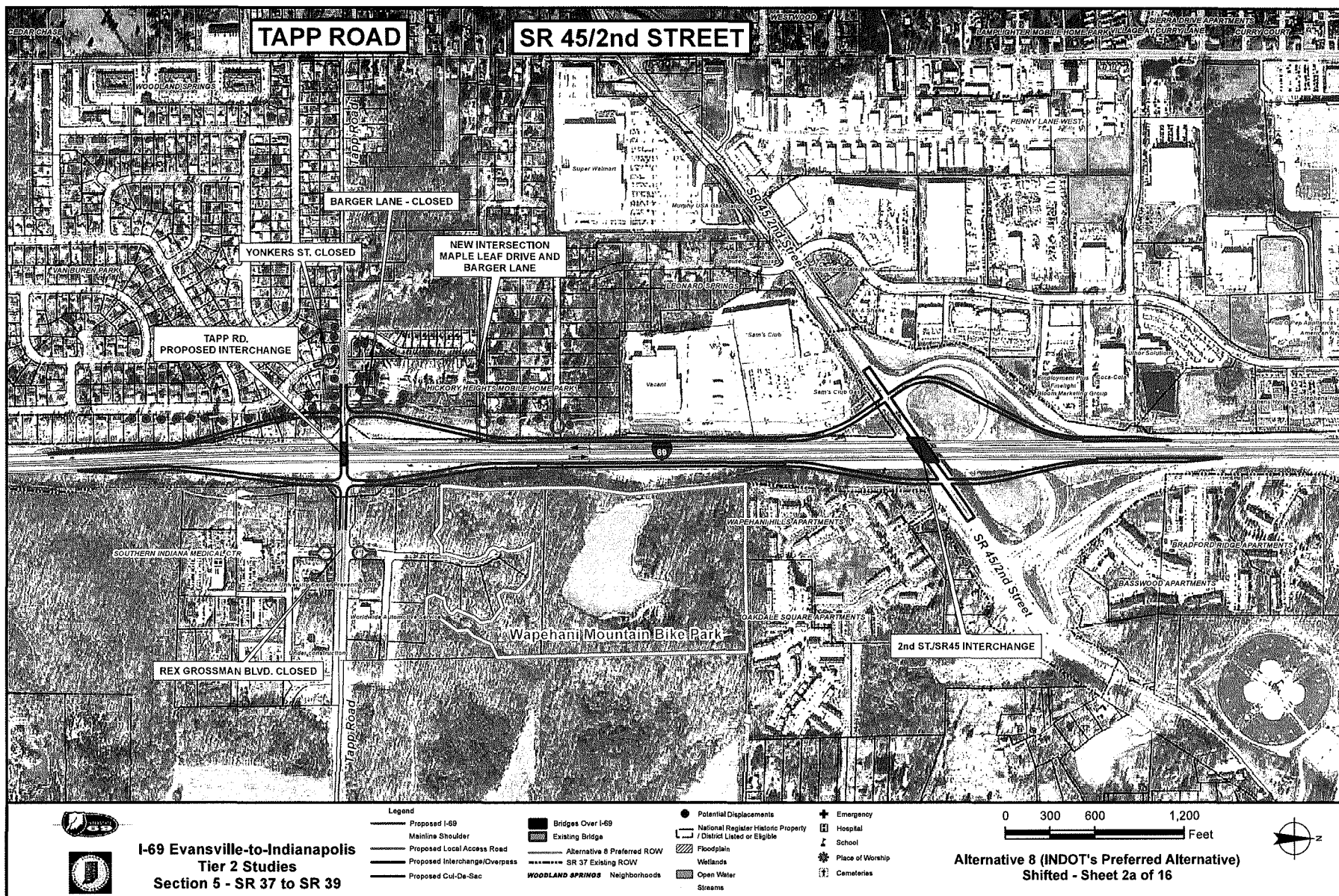
FOR By:  TEAM LEADER FOR 6-3-2013  
FHWA Indiana Division Administrator PLANNING, ENVIRONMENT, RIGHT-OF-WAY AND Date  
CIVIL RIGHTS

Attachments:

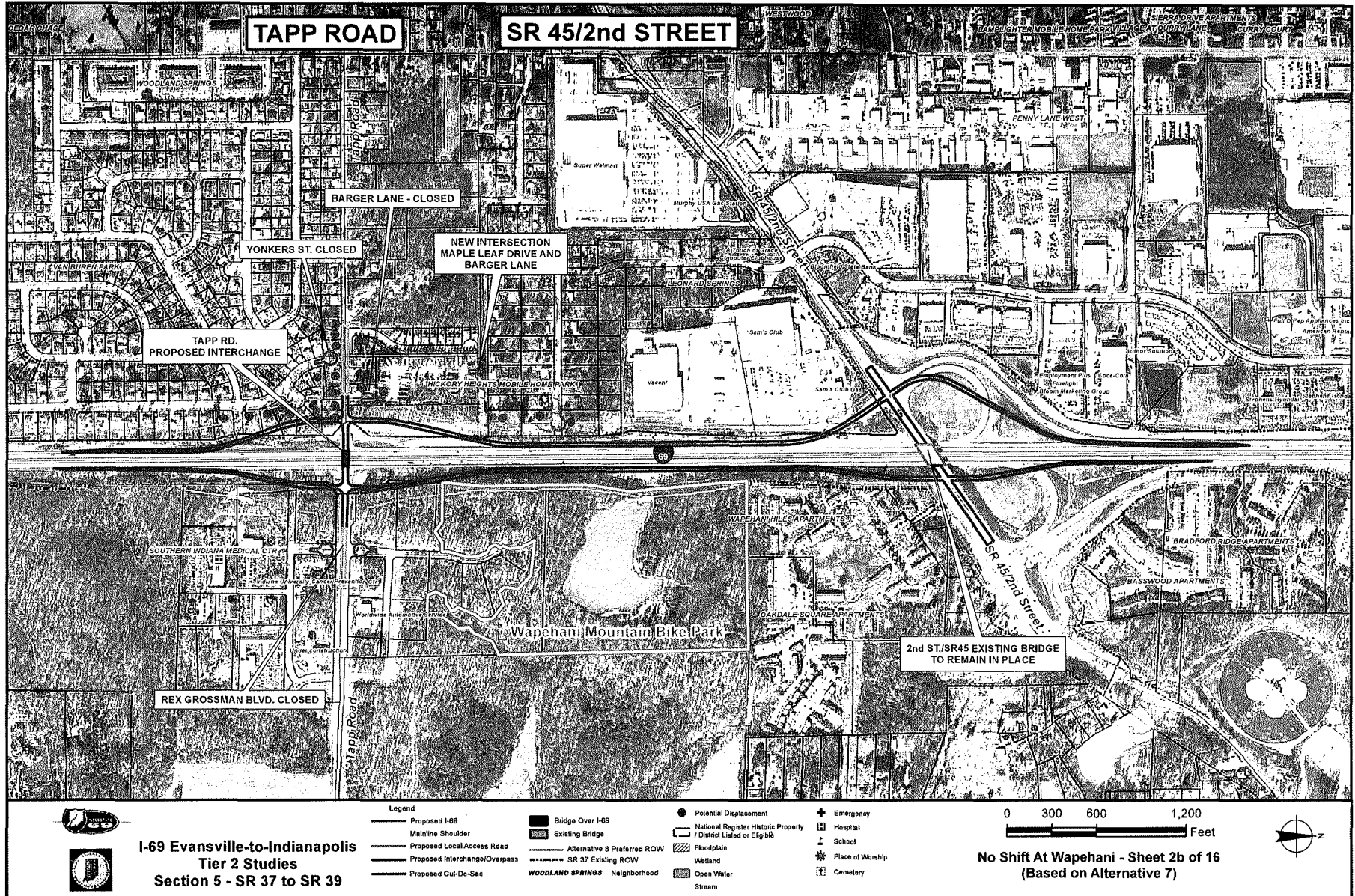
- EXHIBIT A - Figure showing relationship of Section 5 proposed right-of-way to the WMBP
- EXHIBIT B - Sheet 2a of 18, Public Hearing Display
- EXHIBIT C - Sheet 2b of 18, Public Hearing Display
- EXHIBIT D - DEIS Comments pertaining to WMBP



**EXHIBIT A**







## **I-69 Section 5 - DEIS Comments - Wapehani Mountain Bike Park**

The following comments represent those received as part of the DEIS comments that pertain to Wapehani Mountain Bike Park.

### **Federal Agencies**

#### **DOI**

This evaluation, prepared by Indiana Department of Transportation (INDOT) and Federal Highway Administration (FHWA), considered the impacts to Wapehani Mountain Bike Park, a recreational property, and the North Clear Creek Historic Landscape District, a historic property eligible for the National Register of Historic Places. Specific impacts depend upon the alternate chosen for implementation. For the Wapehani Mountain Bike Park, INDOT and FHWA propose to make a de minimis determination for the impacts associated with two of the alternatives, though the preferred alternative avoids any use of the property. For the North Clear Creek Historic Landscape District, the INDOT and FHWA also propose a de minimis determination because they have made a determination of No Adverse Effect to the property by the preferred alternative. In both cases, neither the City of Bloomington, property owner/manager of the Bike Park, nor the State Historic Preservation Officer for the Historic District have concurred with the de minimis finding.

The Department cannot concur with the INDOT and FHWA because there is no evidence that the City of Bloomington or the State Historic Preservation Officer have agreed to the determinations. We will reserve our concurrence with the hope that the Final EIS will present the necessary agreements.

### **State Agencies - None**

### **Local Governments**

#### **City of Bloomington**

Resolution 11-27 of the Redevelopment Commission of the City of Bloomington Indiana, which is attached, provides \$30,000 in support of the Breaking Away Journey to Platinum recommendation to make Wapehani a regional draw for mountain bike enthusiasts as a IMBA (International Mountain Biking Association) designated Gateway Trail System. Improvements include, trail rerouting, new trail development, trail features, and other park improvements. Most of the labor is reliant upon dedicated volunteers and most improvements of phase one, of a three phase plan, have been completed. Gateway Trail Systems aim to serve youth and family-friendly mountain biking riders in close proximity to urban areas. They can be built in small parks at a reasonable cost, and with a minimal environmental footprint. Wapehani uses a series of looped trails designed for beginner, intermediate, and expert riders. Future activities include sanctioned mountain bike races and other community events....

The mainline of the proposed Interstate contains one option that impacts this City Park Facility and a second option which shifts the mainline west to avoid any

disturbance. This second option creates greater impacts to properties west of the proposed Tapp Road interchange. The City is in the process of evaluating these two alternatives and will soon be providing INDOT the results of this evaluation. For this DEIS stage, we simply note the potential impacts of the Interstate mainline on the City's natural resource....

In summary, we support Preferred Alternate No.8 of the DEIS as follows;...

b. use of the existing State Road 45 / 2nd Street interchange bridge subject to approval by the City of Bloomington for use of a portion of their property at Wapehani Park and bike and pedestrian accommodations being made at the interchange;...

## **Public Individuals**

### **Jay Hall**

In regards to the proposed diamond interchange between Highway 45 & Tapp Road:

I've lived in Leonard Springs Addition for nearly 50 years. If an access road is built, it should be on the east side of I-69/37. This would be less expensive than relocating homes and moving power/gas lines on the west side. I know the Wapehani area very well. An access road bordering SR 37 would mean draining the lake which is an eyesore. It could mean another-better-entrance for the bike path and beautifying the area with other paths & ponds.

### **Adam Heichelbech**

Tapp Road - I would prefer to keep I69 aligned with the current IN37 lanes without shifting to the west to avoid Wapehani Mountain Bike Park. This may cost less but there needs to be a guarantee that the interchange lanes running along the west side of the park will be separated by 12 FT concrete barriers to ensure pedestrian separation, reduce noise in the natural area and create a visual obstruction of the roads from the park.

### **Matt Wyass, Broker Association, F.C. Tucker/Bloomington, Realtors** Alternative 7 vs Alternative 8

#### **THOUGHTS...**

- Alternative 7 is much more "cost effective"
- Less homeowners on Yonkers EFFECTED
- Still preserves Wapehani Mtn Park (Bike) & yet leaves "OPPORTUNITY 2 ENHANCE" park as it exists now
- Spend more on a "GREAT BARRIER" to reduce noise and save on the long run....hence (no Alt 8)
- Cost reduction = 2nd St place bridge stay in take for future utilization
- Less intervening of current home owners in Van Buren Park!

### **Jennifer Miers**

I use Wapehani Mt. Bike Park but please don't displace residences to save that narrow strip of the park.

**Rich Grimes**

The new I-69 interstate highway that is going to be next to the Bike Park (Wapehani) would be better for the savings to take 50' of the bike park to east than remove several homes to the west and spend considerably more money.

**Linda Goodwin**

I am writing concerning my house in Van Buren Park, Subsection 5B near the Wapehani Mountain Bike Park.

Right now my house is scheduled to be displaced with others in Van Buren Park. I understand that my house would not be displaced if the City of Bloomington allowed a 50-foot strip of park-land to be used by INDOT so that Highway 37 did not have to shift to the west near me and the Park.

I am writing to say I prefer to stay in my home and hope the City will allow use of this land. There are various reasons for this. One is that, because I still owe a significant amount of money on my home due to the need to refinance since my husband died, there is the worry I will not be able to afford to buy another house (or condo) I would like or need.

Second, change is hard for me, and due to my health problems and amount of work needed to move, it would be very stressful. Third, I have indoor/outdoor cats (have had and like dogs too) and it would change their surroundings. Fourth, I do not want to rent.

I realize the building of I69 in my backyard is not ideal either (i.e. the noise, building activity by workers, etc.) Also, that there will be change on Yonkers St. with houses displaced and blocking of Yonkers St. to overpass and I69 even if my house is spared.

So I will keep praying about this matter; and if I need to move, I hope I will get as much help as possible from INDOT, both financially and practically in moving and buying another place. But right now, I write to say again I prefer to stay where I'm at and have lived a long time since this is a possible option.

I hope my personal comments are of some help in the decision process, as stated in the Public Hearing papers it would cost less with the no-shift plan.

**Marion Reeves, President, RevSport!, Inc.**

Concerning the Wapahani Mountain Bike Park, I favor the option of using the proposed fifty feet of the park. The trail could be set back and rerouted so I-69 does not have to be shifted.

**Jeff Hanna**

In favor of taking part of Wapehani Park for section south of 2nd Street.

**Richard A. Martin**

3.) 3rd Street bridge --

This bridge should be rebuilt or retro-fitted with bicycle and pedestrian accommodation but few options appear to exist. An interesting trade-off is found for the intersection where 8 homes on the west side of I-69 will be removed unless the City of Bloomington agrees to placing about 50 feet of the Wapahani

Bicycle Park into the interstate ROW, thus allowing the 3rd Street to remain as is, i.e. providing no bicycle and pedestrian accommodation. So, by sacrificing the homes and retaining the park land we can get a new bridge and perhaps bicycle/pedestrian accommodation. We need an alternative that saves the homes and provides bicycle/pedestrian accommodation east-west at the interchange. The adequacy of Section 5 for the next 20 years is already doubtful from many perspectives, particularly those utilizing alternative modes of transportation. Rather than enhancing the corridor capacity of local east-west traffic, including non-automobile modes, the 'preferred alternative' further restricts east-west movement by forcing vehicles, cyclists, and pedestrians to a few interchange locations.

**Mobie L. McCammon**

I cannot agree with the decision to bypass Wapehani Bike Park & Trail. I have lived here for 10 years and I have never seen a bike over there. It has been explained to all, but I do not agree. How can you justify spending an additional 5.4 million dollars of "taxpayer money" for a lake and bike trail?

**Stephanie Ems-McClung**

Hello I am a home owner in Van Buren Park and I'm commenting on the 2 proposals surrounding the Tapp Rd and 2nd St interchanges. I would like to state that the preferred route (sheet A) is an excess and inefficient use of tax payers money to protect a small portion of a public park that in the end will not lose use of the land. This route will spend an extra \$5.4 million of tax payers hard earned money in an already tough economy, will cause excessive disruption of traffic to redo the 2nd St bridge and to move the highway 55 feet west, and not to mention disruption to Van Buren residents for having to move major utilities consisting of a gas main and power corridor. Furthermore, this route will likely cause the displacement of an additional 7 families in the Van Buren neighborhood. While the preferred route A causes more disruption and confiscation to our property than route B (we are not one of the planned displaced homes), I feel much more strongly that route A is financially irresponsible to the public and to the neighborhood as a whole than to our personal property. Thank you for taking my comments seriously as I think I69 will be a benefit to the community.

**Public Organizations**

**Paul Arlinghaus, Hoosier Mountain Bike Association**

I represent the Hoosier Mountain Bike Association and this comment is from HMBA-IMBA as an organization. HMBA would support Alt 8 as it does not impact the park. HMBA would consider supporting alternate 7 provided a significant part of the \$5.4M in project savings was invested in the park. The funds should be used to: a) Purchase private land that is currently used by park users (section of trail currently go on private land) b) Ensure the removal of the dam does not impact the trails (continued connectivity on the East side of the park) and has a favorable impact on the environment. c) That either fill dirt or a bridge be built to ensure trails on the West side of the property and that the North and South side of the park continue to have connectivity on the West side of the Park. d) Trail and facility improvements.